

U.S. ENVIRONMENTAL PROTECTION AGENCY

MARINE PROTECTION, RESEARCH, AND
SANCTUARIES ACT (OCEAN DUMPING) PERMIT

PERMIT TYPE:	Emergency
EFFECTIVE DATE:	February 3, 2000
EXPIRATION DATE:	March 15, 2000
APPLICANT:	United States Coast Guard Marine Safety Office P.O. Box 71526 San Juan, PR 00936-8626
TRANSPORTER:	Titan Maritime Industries, Inc.

I. Action

This is an emergency ocean dumping permit that allows the United States Coast Guard (USCG) to offload and transport 14,000 metric tons of hardened Portland cement from the cargo holds of the grounded M/V SERGO ZAKARIADZE, and dispose of it in the waters of the Atlantic Ocean off Puerto Rico. The imminent threat of break-up of the grounded vessel poses a substantial and unacceptable safety hazard to human life that admits of no other feasible solution and makes this permit action necessary. Minimal adverse environmental impacts from the ocean disposal of this cement are expected.

II. Background

On November 18, 1999, the M/V SERGO ZAKIARDZE ran aground at the entrance to San Juan Harbor. In the weeks since the vessel grounded, wave actions have caused the vessel's structure to deteriorate, manifesting as numerous cracks in the vessel's deck and deformation in the vessel's sideshell plating. Additionally, the shock loading and vibration caused by waves pounding on the hull allowed sea water coming on deck to enter the cargo holds, causing dry cement to set-up and become hardened inside the M/V SERGO ZAKIARDZE's cargo holds. Bad weather continues to affect the vessel and there is a significant and growing threat that the M/V SERGO ZAKARIADZE will break apart if not removed immediately.

If the M/V SERGO ZAKARIADZE were to break apart, the pieces of the hull and the

hardened cement in the water would pose an immediate danger to mariners transiting the area (i.e. increase the potential for additional groundings). There is also a significant concern that in the event of breakup, pieces of the hull could block the entrance to San Juan Harbor, severely and negatively impacting commerce and the economy of Puerto Rico. Any blockage of the San Juan Harbor would impact health and safety in Puerto Rico since over 95% of the island's container traffic (1.5 million TEU/year) come through San Juan facilities.

In addition to the significant risks to human health and welfare, there is potential for adverse ecological consequences if the ship breaks apart. The dry cement remaining in the vessel, if released, would create an adverse localized impact by raising the pH level of the water, and could potentially result in a smothering effect to benthic organisms. Although the Unified Command has successfully removed most of the oil from the vessel, approximately 3,000 gallons of oil remains in the bottoms and sides of many of the M/V SERGO ZAKARIADZE's fuel tanks and in the vessel's piping system. If the vessel were to break apart, the oil remaining onboard the M/V SERGO ZAKARIADZE, which the Unified Command has determined still poses a substantial threat to the public health and welfare of the environment, would be spilled. Finally, the pieces of the vessel's hull and hardened cement cargo have the potential to seriously harm the significant archeological, historic and cultural resources located in the area surrounding Castle El Morro.

USCG has determined that the offloading of 14,000 metric tons of hardened cement is necessary to sufficiently lighten the grounded vessel to allow it to be refloated and removed safely from its current location. USCG seeks authorization to offload and transport 14, 000 metric tons of hardened Portland cement from its present location aboard the grounded M/V SERGO ZAKARIADZE and dispose of it in the Atlantic Ocean off Puerto Rico. Transportation of the hardened Portland cement for disposal in the Atlantic Ocean is dumping subject to the Marine Protection, Research, and Sanctuaries Act (MPRSA). MPRSA Sec. 101(a), 33 U.S.C. Sec. 1411(a).

Set-up Portland cement is an essentially inert material, as compared to the material in its cement dust form. Owing to the depth of water (approximately 1800 ft) at the location selected for disposal, the dumping of this set-up cement is not anticipated to result in significant adverse impact on the marine environment, navigation, living and non-living marine resource exploitation, scientific study, recreation, or other uses of the ocean.

III. Justification for the Emergency Permit

Emergency permits are addressed in the ocean dumping regulations at 40 CFR 220.3(c), which provides:

1. A permit may be issued to dump materials where substances prohibited as other than trace contaminants are present in greater than trace amounts,

- (a) after consultation with the Department of State, to determine if any of the signatories to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention of 1972) are likely to be affected by the emergency dumping; and
 - (b) when an emergency has been demonstrated to exist that requires such dumping. The emergency must pose an unacceptable risk relating to human health, and admit of no other feasible solution. As used in 40 CFR 220.3(c), “emergency” refers to situations requiring action with a marked degree of urgency, but is not limited to circumstances that require immediate action.
- 2. Emergency permits may be issued for other materials, except those prohibited by 40 CFR 227.5, without consultation with the Department of State, when EPA determines that there exists an emergency requiring the dumping of such materials, which poses an unacceptable risk to human health and admits of no other feasible solution.

EPA has concurred with the USCG assessments that the potential for break up of the M/V SERGO ZAKARIADZE poses an unacceptable risk to human health, and that disposal of the hardened cement admits of no other feasible solution. To allow for the expedited refloating and removal of the M/V SERGO ZAKARIADZE, the USCG must have a permit that will allow for immediate removal of the excess weight of the hardened cement and its subsequent disposal at sea. USCG must have this permit to expedite refloating of the stricken vessel and thereby relieve the potential for its break up and the associated human health risks. There are no feasible alternatives to disposal of the hardened Portland cement at sea, given the immediacy of the threat of break up of the vessel. Landside disposal options, including recycling, landfill disposal and storage, were investigated for this material and determined to be infeasible due to logistical considerations. Failure to remove the weight necessary to refloat the vessel before it breaks up presents a serious risk to human health and safety.

There are no materials present in the hardened cement that are prohibited by 40 CFR 227.5. Article V(2) of the London Convention 1972 (LC 72) allows the issuance of emergency permits as an exception to LC 72 Article IV(1)(a) and Annex I prohibitions against the dumping of certain substances. 40 CFR 220.3(c) implements the provisions of that article. Consistent with LC 72 Article V(2), 40 CFR 220.3(c) is intended to assure that necessary consultation with the International Maritime Organization and potentially affected states take place if the material to be dumped contains greater than trace contaminants of LC 72 Annex I substances. Results of testing are not available, and the immediacy of need for this permit action precludes the possibility of conducting the necessary testing to determine whether this Portland cement contains LC72 Annex I constituents (listed at 40 CFR 227.6) at greater than trace levels. Although it is very unlikely that this Portland cement contains these constituents at greater than trace levels, it cannot be documented at this time. Therefore, EPA has discussed this issue during consultations with the Department of State, as per the provisions of 40 CFR

220.3(c).

Thus, the Agency has determined that all necessary conditions for issuance of an emergency permit, pursuant to 40 CFR 220.3(c), have been met. Further, EPA has concluded that this emergency dumping action will have minimal adverse environmental effects. EPA also believes that, because of the urgency of the situation, and the risk to human health discussed above, the public interest requires the issuance of an emergency permit as soon as possible, without public notice prior to its issuance. Consistent with Section 223.3(b)(3), prior notice is not required where the Administrator has determined that an emergency exists that poses an unacceptable risk relating to human health that admits of no other feasible solution.

IV. Terms and Conditions of Permit

1. This permit authorizes the transportation and dumping into ocean waters of 14,000 metric tons of hardened Portland cement, pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq., (MPRSA), subject to the terms and conditions set forth herein. All transportation and dumping authorized herein shall at all times be undertaken in a manner consistent with this permit.

2. The applicant designated above is the permittee, and is responsible for compliance with this permit.

3. The permittee, USCG, is authorized to offload and transport, by dump barge, 14,000 metric tons of hardened Portland cement from the M/V SERGO ZAKARIADZE for ocean disposal and to dump it into the Atlantic Ocean within a 0.5 nautical mile radius of 18° 32.00' N and 66° 07.5' W.

4. No limitation is placed on the rate of discharge of the hardened cement from the dump barges.

5. The hardened Portland cement shall not be altered in its content from the above description by the addition of wastes from any other sources or any other materials.

6. Transportation to, and dumping at, any location other than that authorized by this permit shall constitute a violation of the MPRSA and of this permit.

7. Transportation and dumping of any materials not specifically identified, or in excess of that identified, in this permit shall constitute a violation of the MPRSA and this permit.

8. The transporter is to be made aware of the potential presence of marine turtles and marine mammals in the area, as well as federal penalties for taking species listed under the U.S. Endangered

Species Act, and is required to post a watch at all times when the vessel is underway or dumping. Should a listed species or other marine mammal species be present in the area of the disposal, all disposal shall stop until the animal(s) have left the area. No marine mammal or listed species will be harassed to make it leave the area.

9. If any dumping or transporting is performed by an entity other than the identified applicant or transporter, all reports required hereunder shall be jointly executed by both the permittee and an officer of that entity.

10. Any dumping or transporting authorized by this permit by any entity other than the identified applicant or transporter shall not relieve the identified applicant from full responsibility for compliance with the terms of this permit, or the MPRSA, or both; nor shall the issuance of this permit relieve any other applicant or transporter from responsibility for compliance with the terms of this permit, or the MPRSA, or both.

11. The permittee shall submit a full report on the dumping activities authorized by this permit to USEPA within 30 days after the dumping. This report shall include:

- A. A description (by latitude and longitude) of the precise locations where the Portland cement was released by each barge;
- B. The name and title of the person in charge of the vessel that transported the Portland cement and conducted the operation;
- C. The time of the dumping activities, including departures from the current location of the M/V SERGO ZAKARIADZE, and release times and dates;
- D. Dates, times and locations of endangered or threatened species sightings.

12. The permittee shall immediately notify USEPA of any violation of any condition of this permit.

13. All reports and notifications to USEPA required under this permit shall be submitted to:
Mark Reiss, Environmental Scientist
Division of Environmental Planning and Protection
U.S. Environmental Protection Agency
290 Broadway - 24th Floor
New York, NY 10007

14. The reporting requirements contained in this permit are in addition to any reporting requirements imposed by any other agency.

15. The transporter shall place a copy of this permit in a conspicuous place in the vessel used for the transportation and dumping operations authorized herein.

16. The terms used in this permit which are defined in Section 3 of the MPRSA shall have the same meaning herein.

17. This permit may be modified or revoked, in whole or in part, for causes including, but not limited to, the following:

- A. Violation of any term or condition of the permit;
- B. Misrepresentation, inaccuracy, or failure by the applicant to disclose all relevant facts;
- C. A change in any condition or material fact upon which this permit is based that requires either a temporary or permanent reduction or elimination of the authorized transportation or dumping including, but not limited to, newly discovered scientific data relative to the granting of this permit;
- D. A determination by EPA that the dumping has resulted, is resulting, or may result, in imminent and substantial harm to human health or welfare, or to the marine environment; and
- E. Failure to notify appropriate EPA officials of dumping activities.

Jeanne M. Fox
Regional Administrator

Date